

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

|                                |   |                      |
|--------------------------------|---|----------------------|
| Walter William Cartwright III, | ) |                      |
|                                | ) |                      |
| Plaintiff,                     | ) | <b>ORDER</b>         |
|                                | ) |                      |
| vs.                            | ) |                      |
|                                | ) |                      |
| Captain Chris Ray,             | ) | Case No. 1:23-cv-085 |
|                                | ) |                      |
| Defendant.                     | ) |                      |

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Before the undersigned are Plaintiff’s motion to preserve evidence and request that the court order service of his amended complaint. (Doc. Nos. 10 and 19). For the reasons that follow, the motion to preserve evidence and request for service are deemed moot.

**I. BACKGROUND**

Plaintiff initiated the above-captioned pro se on May 1, 2023, with the submission of an application to proceed without prepayment of fees, which the court granted, and a complaint. (Doc. Nos. 1, 2, 4, and 6).

The undersigned screened Plaintiff’s complaint pursuant to 28 U.S.C. 1915A and on May 9, 2023, issued an order giving Plaintiff until May 26, 2023, to either file an amended complaint or show cause why his original complaint should not be dismissed in part. (Doc. No. 9).

On May 19, 2023, Plaintiff filed a “Motion to Preserve Evidence.” (Doc. No. 10). Therein, he requested that the court issue an order directing Defendant to preserve videos and photos taken between 10:00 AM and 6:00 PM on April 11, 2023, as well as all of Defendant’s correspondence with jail staff that may be stored on electronic devices. (Id.).

On May 24, 2023, Plaintiff filed a supplement to his complaint. (Doc. No. 11). He also filed

a motion seeking leave to correct a typographical error in his original complaint. (Doc. No. 12).

On June 6, 2023, the undersigned issue an order and report and recommendation that (1) granted Plaintiff's motion to correct the typographical error, (2) directed the Clerk's office to attached a copy of the supplement to Plaintiff's original complaint and refile them as an amended complaint, and (3) recommended that the Court dismiss all but one of Plaintiff's claims and direct the Clerk's office to effectuate service of Plaintiff's amended complaint on Defendant. (Doc. No. 14).

On July 17, 2023, the Court adopted the undersigned's report and recommendation, dismissed Plaintiff's amended complaint in part, and directed the Clerk's office effectuate service of the amended complaint on Defendant. The Clerk's office subsequently sent a "Notice of Lawsuit and Request to Waive Service of a Summons" and a copy of Plaintiff's amended complaint to Defendant. (Doc. Nos. 17 and 18).

On July 24, 2023, Plaintiff filed a document captioned "discovery request" in which he requests that the court "arrange for service on defendant if he fails to return waiver, and to respond within 30 days." (Doc. No. 19).

## **II. DISCUSSION**

As the Court has already directed the Clerk's office to effectuate service of Plaintiff's amended complaint on Defendant, Plaintiff's request to effectuate service (Doc. No. 19) is moot. Defendant has until August 20, 2023, to execute and return a waiver of service. Should he not execute and return a waiver, the Clerk's office will serve Defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure as previously directed.

Plaintiff's request for the preservation of evidence (Doc. No. 10) is also moot. Rule 37(e)

of the Federal Rule of Civil Procedure outlines that a party must preserve documents and electronically-stored information when it reasonably anticipates litigation. As noted above, the Clerk's office has sent a "Notice of Lawsuit" and a copy of Plaintiff's amended complaint to Defendant. Consequently, Defendant should be aware of the pending litigation along with his obligation under Fed. R. Civ. P. 37(e) to preserve evidence. See e.g., O'Quinn v. Vanderhove, No. 3:19-CV-01010-MAB, 2020 WL 6701193, at \*9 (S.D. Ill. Nov. 13, 2020) (finding Plaintiff's motion for preservation of evidence moot when Defendants were already aware of their obligations under Fed. R. Civ. P. 37(e)).

### **III. CONCLUSION**

Plaintiff's motion to preserve evidence and request that the court order service of his amended complaint (Doc. Nos. 10 and 19) are deemed **MOOT**.

**IT IS SO ORDERED.**

Dated this 26th day of July, 2023.

/s/ Clare R. Hochhalter  
Clare R. Hochhalter, Magistrate Judge  
United States District Court